

BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal }
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 }
GEORGE S. ALLEN }

Appearances:

For Appellant: William Strong, Attorney at Law

For Respondent: Burl D. Lack, Chief Counsel;
 John S. Warren, Associate Tax Counsel

O P I N I O N

This appeal is made ostensibly **under** Section 18593 of the Revenue and Taxation Code from the action of the Franchise Tax Board with respect to assessments of additional personal income tax against George S. Allen in the amounts of \$2,131.32, \$814.57 and \$832.45 for the years 1946, 1947 and 1948, respectively,

In the years 1950, 1952 and 1954, respectively, the Franchise Tax Board issued to Appellant (1) a **jeopardy assessment** for the year 1946, (2) a notice of proposed assessment for 1947 and (3) a notice of proposed assessment for 1948. Appellant filed a timely petition for reassessment in the case of the jeopardy assessment but did not furnish a bond or other security. He did not file a protest against the assessment for the year 1947. He filed a timely protest against the assessment for 1948 and the Franchise Tax Board issued a notice of action denying the protest on August 30, 1954. The 1948 assessment was in the amount of \$832.45.

Under dates of August 19 and August 23, 1954, the Franchise Tax Board issued notices titled "**Statement of Cancellation, Credit or Refund of Personal Income Tax**" for the years 1947 and 1946, respectively. Based upon a Federal income tax audit report submitted by the Appellant, the notices reduced the assessments to \$2,131.32 for the year 1946 and \$814.57 for the year 1947. On October 19, 1954, Appellant notified the Franchise Tax Board by telegram as follows:

"I protest the proposed additional
assessment of taxes dated August 19,
1954, for 1946 claim number 67960.

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1947 claim number 77164 and 1948 claim number 47051 on the grounds that the facts were **mistated.**"

By a letter dated October 21, 1954, the Franchise Tax Board replied in part:

"Your claims for 1946 and 1947 were acted on August 19, 1954, and August 23, 1954. You have ninety days from the date of such action within which to appeal to State Board of Equalization."

The present appeal was filed November 17, 1954.

The Franchise Tax Board contends that this Board has no jurisdiction over the appeal on the grounds that the assessments have become final and no refund claims were filed. Appellant contends that the Franchise Tax Board is estopped by its letter of October 21, 1954, to deny the jurisdiction of this Board.

With respect to the jeopardy assessment for the year 1946, Section 18644 of the Revenue and Taxation Code provides that the assessment becomes final unless a petition for reassessment, accompanied by bond or other security is filed within ten days after the assessment is issued. No bond or other security was furnished. Furthermore, until the year 1955, after the filing of this appeal, there was no provision for appeal to this Board from a decision of the Franchise Tax Board on a petition against a jeopardy assessment,

In regard to the notice of proposed assessment for the year 1947, Section 18591 of the Code provides that if no protest is filed the assessment becomes final upon the **expiration** of sixty days from the mailing of the notice. No protest, or certainly no timely protest, was filed,

In connection with the notice of proposed assessment for the year 1948, Section 18593 provides that the action of the Franchise Tax Board on a protest is final upon the expiration of thirty days from the time a notice of action on the protest is issued, unless an appeal to this Board is made within that period. This appeal was made approximately two and one-half months after the notice of action was issued.

Section 19057 provides for appeal to this Board within ninety days after the action of the Franchise Tax Board on a claim for refund. There is no showing here that the assessments were paid or that claims for refund were filed with the

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Franchise Tax Board,

It is also noted, with respect to the notices titled "Statement of Cancellation, Credit or Refund of Personal Income Tax" that Section 19131 permits the Franchise Tax Board to cancel a tax which has been illegally levied. There is no provision for appeal to this Board from action or non-action under this section.

It is thus apparent that we have no authority to consider this appeal unless the Appellant is correct in his assertion that the Franchise Tax Board is estopped by its letter of October 21, 1954, to deny the jurisdiction of this Board. This assertion, however, is untenable. It is sufficient to point out that, under any rational theory based on the facts here presented, Appellant's right of appeal as to any of the years in question had passed before he sent his telegram of October 19, 1954, and before the letter in question was mailed. The letter could not have prejudiced his position.

O R D E R

Pursuant to the views expressed in the Opinion of the Board on file in this proceeding, and good cause appearing therefor,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED, that the appeal of George S. Allen from the action of the Franchise Tax Board with respect to assessments of additional personal income tax against him in the amounts of \$2,131.32, \$814.57 and \$832.45 for the years 1946, 1947 and 1948, respectively, be and the same is hereby dismissed.

Done at Sacramento, California, this 17th day of December, 1957, by the State Board of Equalization.

Robert E. McDavid, Chairman

J. H. Quinn, Member

Geo. R. Reilly, Member

Paul R. Leake, Member

_____, Member

ATTEST: Dixwell L. Pierce, Secretary